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In the Supreme Court of the United States
OCTOBER TERM, 1977

PATRICIA ROBERTS HARRIS, SECRETARY OF THE
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT*

REPLY MEMORANDUM FOR PETITIONERS

WADE H. McCREE, JR.,
Solicitor General,
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Washington, D.C. 20530.



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1. Respondents are wrong in suggesting (Br. in Opp. 6-8) that the decision below no longer has practical significance. While it is true that the Department has been seeking ways to reduce the disruptive effects of relocation on the tenants in this case and on tenants in low-income housing projects generally, the decision below interferes with the Department's ability to devise an appropriate scheme of relief programs. The Relocation Act imposes strict requirements governing the circumstances under which relocation can be ordered and the benefits that must be provided to statutory "displaced persons." If the decision below stands, the Department will not have the flexibility it deems necessary to devise relief programs that fit the varying circumstances that may arise in the course of agency project terminations, because it will be limited

to either meeting the requirements of the Relocation Act or continuing the projects indefinitely. Moreover, the importance of the decision below extends beyond its impact on the Department of Housing and Urban Development. The interpretation of the Relocation Act by the court of appeals in this case applies to relocations for programs undertaken by any federal agency or by state or local agencies with federal financial assistance.

2. Respondents accuse us of "an important misstatement" in describing the Department's acquisition of Sky Tower as "involuntary" (Br. in Opp. 2 n. 2), and they go on to argue (*id.* at 10-12) that the supposedly voluntary nature of the acquisition here distinguishes this case from the facts presented to the Seventh Circuit in *Alexander v. U.S. Department of Housing and Urban Development*, 555 F. 2d 166, petition for a writ of certiorari pending, No. 77-874, and to the Second Circuit in *Caramico v. Secretary of the Department of Housing and Urban Development*, 509 F. 2d 694 (C.A. 2). Contrary to respondents' suggestion, the district court here did not make a finding "that HUD's acquisition of Sky Tower was not 'involuntary'" (Br. in Opp. 2 n. 2; see also *id.* at 12: "[T]he District Court expressly found that the foreclosure-transfer to HUD was not 'involuntary' * * *"). This is a characterization by respondents of the district court's recitation of the facts (389 F. Supp. 99, 101). We take issue with that characterization, not with the facts as found by the district court.

The undisputed facts showed that after two contractors had defaulted in their rehabilitation efforts, the mortgagee insisted on a second increase in the Department's mortgage insurance guarantee. The Department declined to authorize the increase and the mortgagee thereupon declared the owner in default and exercised its rights under the mortgage insurance contract. Those rights

entitled the mortgagee to convey title to the project to the Department in exchange for the mortgage insurance benefits.

To be sure, the Department might have been able to forestall foreclosure—and its consequent acquisition of the project—by continuing to increase its mortgage insurance obligation. In that context, the district court stated that the Department “insisted that the property be foreclosed” (389 F. Supp. at 101). But the district court did not find, that the Department’s acquisition of Sky Tower in these circumstances was “not ‘involuntary.’”

Such a characterization of the Department’s acquisition, moreover, provides no principled basis for distinguishing the facts in this case from those in *Alexander* or *Caramico*. No reason appears why the availability of Relocation Act benefits should turn on whether the mortgagee requests an increase in the mortgage insurance guarantee before foreclosing on the project.

In *Alexander*, which respondents cite as an example of an “involuntary” acquisition (Br. in Opp. 11), the Department obtained title to the project by bringing its own foreclosure action in the face of the mortgagor’s continuing default. 555 F. 2d at 167. Since the Department had the option of refraining from foreclosure and continuing to suffer the mortgagor’s default, the acquisition could be considered “voluntary” in the same sense that respondents contend the acquisition of Sky Tower was “voluntary.” Indeed, since the Department acquired title to the project in *Alexander* through its own action rather than automatically in response to action by the mortgagee, the acquisition in *Alexander* could be said to be even more “voluntary” than the acquisition in the present case.

Similarly, the court in *Caramico* made it clear that by referring to "involuntary" acquisitions, it meant to refer generally to acquisitions of properties under mortgage insurance programs after default and foreclosure. 509 F. 2d at 698-699. Because such an acquisition occurs in response to a default and represents "a failure of the [agency] program rather than its desired result," the acquisition, according to the *Caramico* court, is "clearly involuntary." *Id.* at 699.

3. In denying that the decision below conflicts with *Alexander* or with the Eighth Circuit's decision in *Harris v. Lynn*, 555 F. 2d 1357, affirming 411 F. Supp. 692 (E.D. Mo.), certiorari denied, October 31, 1977 (No. 77-5233), respondents contend that neither of those cases "turned on the existence of a time lag between acquisition and notice" (Br. in Opp. 9). This argument is based on a mischaracterization of our position with respect to the "written order" clause of 42 U.S.C. 4601(6). Our position does not require simultaneity between the written order to vacate and the acquisition. We argue, rather (see Pet. 11-14), that in order for a person to be "displaced" within the meaning of the written order clause, as reflected in both the language and the legislative history of Section 4601 (6), it is necessary that the written order be issued in connection with an acquisition or an anticipated acquisition, whether or not there is a "time lag" between the two events.¹

¹*Alexander* and *Harris* both support this interpretation of the written order clause. See *Alexander, supra*, 555 F. 2d at 170: "Thus, persons displaced by such programs are persons displaced by governmental activities involving the acquisition of land ***"; *Harris, supra*, 411 F. Supp. at 695: "[T]he fact remains that plaintiffs were not displaced as a result of the government's alleged 1955 'acquisition' of ownership." Both decisions are therefore in conflict with the decision below, which held that there is no need for such a nexus between the order to vacate and the acquisition (see Pet. App. 9A-10A).

4. Respondents also seek to reduce our argument to the claim that "the statute applies only to displacements for construction projects, thereby excluding displacements due to demolition" (Br. in Opp. 9). In fact, we contend (Pet. 14-15) that the demolition in this case was not within the reach of the Relocation Act because the Department of Housing and Urban Development did not acquire the property for the purpose of a federal program or project. Under a proper construction of the statute, we argue, it is the agency's acquisition—not simply its order to vacate—that must be for the purpose of a federal program or project.²

In addition to this mischaracterization, respondents err in contending (Br. in Opp. 11-12) that the *Alexander* case does not conflict with the decision below because the Seventh Circuit concluded that the demolition of the project in that case, unlike the proposed demolition of Sky Tower, was not a "program or project" within the meaning of 42 U.S.C. 4601(6). As we pointed out in the petition (Pet. 9 n. 4), this purported distinction does not reflect any realistic difference between the two cases, since any demolition of a housing project is presumably intended to "eliminate blight" and otherwise serve the ultimate interests of the community.³

²See, e.g., 42 U.S.C. 4622(a), the operative section of the Act providing for the payment of moving and related expenses: "Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person * * *."

³In seeking to distinguish the *Harris* case, respondents assert, without support, that the court in that case was interpreting the "acquisition" clause rather than the "notice" clause of 42 U.S.C. 4601(6) (Br. in Opp. 9). The much more natural reading of the court's decision in *Harris* is that Relocation Act benefits are available only to persons who move in connection with a federal acquisition, whether or not as the result of a written order of the acquiring agency. On this reading, the *Harris* decision is squarely in conflict with the decision below.

CONCLUSION

For the reasons stated above and in our petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. McCREE, JR.,
Solicitor General.

JUNE 1978.

